

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

\* \* \* \* \*  
UNITED STATES OF AMERICA \*  
vs. \* Case No. 2:18-cr-780  
\* February 6, 2020  
QUENTIN JOHN FISHBURNE and \*  
RENATA SHONTEL ELLISON \*  
\* \* \* \* \*

REPORTER'S OFFICIAL TRANSCRIPT OF THE  
MOTION HELD BEFORE  
THE HONORABLE DAVID C. NORTON  
UNITED STATES DISTRICT JUDGE  
FEBRUARY 6, 2020

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Proceedings recorded by mechanical stenography using  
computer-aided transcription software.

1 (Call to order of the Court.)

2 THE COURT: Take your seats. Thanks. Yes, sir,  
3 Mr. Schoen?

4 MR. SCHOEN: Your Honor, the next case is United  
5 States of America versus Quentin John Fishburne and Renata  
6 Shontel Ellison. It's criminal number 2:18-cr-780.

7 We're here on a number of motions: Motions for  
8 Severance made by both of the Defendants, a Motion for a  
9 Deposition made by Mr. Shahid on behalf of Mr. Fishburne, and a  
10 Motion for Bond was also mentioned.

11 THE COURT: Okay. And, of course, there's a Motion  
12 to Suppress that was filed at 5:00 yesterday afternoon. You  
13 haven't responded to that yet?

14 MR. SCHOEN: No, Your Honor. We are working  
15 furiously on that part.

16 MR. SHAHID: And we got a motion this morning on  
17 404(b) evidence from the Government, so --

18 THE COURT: Okay.

19 MR. SCHOEN: And notice.

20 MR. SHAHID: A lot of things flying in the cyber  
21 world.

22 THE COURT: Juries have a tendency to focus  
23 everybody. So I'm ready when you are, Mr. Shahid.

24 MR. SHAHID: Judge, first thank you for the Court's  
25 indulgence.

2 : 0 6 P M 1 THE COURT: No problem.

2 : 0 6 P M 2 MR. SHAHID: I apologize for the delay, but --

2 : 0 7 P M 3 THE COURT: The first rule in my chambers is family  
2 : 0 7 P M 4 comes first.

2 : 0 7 P M 5 MR. SHAHID: Thank you, Judge. I appreciate that.

2 : 0 7 P M 6 Your Honor, we have two motions I think somewhat  
2 : 0 7 P M 7 tied together. One is a motion for severance, and the other is  
2 : 0 7 P M 8 a motion to depose Ms. Ellison, our co-defendant.

2 : 0 7 P M 9 This is a simple but a complicated case I think  
2 : 0 7 P M 10 the Government has brought to the grand jury and that's pending  
2 : 0 7 P M 11 for our trial later on in March.

2 : 0 7 P M 12 Mr. Fishburne is charged with two counts being a  
2 : 0 7 P M 13 felon in possession of a firearm. Both those counts result  
2 : 0 7 P M 14 from a traffic stop that occurred on different -- different  
2 : 0 7 P M 15 times.

2 : 0 7 P M 16 In addition, he's charged with a conspiracy with  
2 : 0 7 P M 17 Ms. Ellison to -- and there's a -- multiple parts of that  
2 : 0 7 P M 18 conspiracy are to lie to a federal firearms dealer about  
2 : 0 8 P M 19 obtaining guns and then being engaged in providing guns to  
2 : 0 8 P M 20 people that she is alleged to have known to be felons.

2 : 0 8 P M 21 I'm going to focus on Count 1 of the Indictment  
2 : 0 8 P M 22 first, Judge. Excuse me. Count 1 of the Indictment --

2 : 0 8 P M 23 THE COURT: Before you get there, you said that both  
2 : 0 8 P M 24 guns were a result of a traffic stop. It looks like to me that  
2 : 0 8 P M 25 both guns were not a result of the traffic stop. There was one

1 in the car, and then there's one in 2014.

2 MR. SHAHID: Right. One was in 2014 in which he was  
3 charged in Colleton County with a failure to stop for a blue  
4 light and other associated offenses.

5 THE COURT: But in the Motion to Suppress, you said  
6 there was two guns. I took it to say that there were two guns  
7 found in the car in the Motion to Suppress. That's what you  
8 started out saying here today. You said he was charged with  
9 two counts of felon in possession stemming from a -- the car  
10 search.

11 MR. SHAHID: There are two counts from two separate  
12 cars.

13 THE COURT: Okay.

14 MR. SHAHID: Two separate guns.

15 THE COURT: But there's only one separate Motion to  
16 Suppress.

17 MR. SHAHID: That's right. But we're here for the  
18 Motion to Sever.

19 THE COURT: I understand.

20 MR. SHAHID: Okay. So on Count 1 of the -- for the  
21 Motion to Sever arising on March 31st, 2018, traffic checkpoint  
22 stop.

23 THE COURT: Which is what you moved to suppress last  
24 night at 5:00?

25 MR. SHAHID: That's right.

2 : 0 9 P M 1 THE COURT: Okay. Gotcha.

2 : 0 9 P M 2 MR. SHAHID: In that incident, we have a statement  
2 : 0 9 P M 3 from our co-defendant which exonerates Mr. Fishburne about the  
2 : 0 9 P M 4 element of knowing, knowingly having possession of that  
2 : 0 9 P M 5 firearm. So in very simple terms, the Government's standard of  
2 : 0 9 P M 6 proof has to show the elements of there was a gun, it traveled  
2 : 0 9 P M 7 in interstate commerce, he's a prohibited person. And then the  
2 : 0 9 P M 8 key of all of that is that he knowingly possessed that firearm,  
2 : 0 9 P M 9 the fourth and most critical element of this offense. If he  
2 : 1 0 P M 10 didn't know he had the gun, he's not guilty of the offense.  
2 : 1 0 P M 11 The statement --

2 : 1 0 P M 12 THE COURT: How could he not know that he had a gun?  
2 : 1 0 P M 13 You mean if he didn't know there was a gun in the car --

2 : 1 0 P M 14 MR. SHAHID: He did not know he had the gun in the  
2 : 1 0 P M 15 car.

2 : 1 0 P M 16 THE COURT: Gotcha. Okay.

2 : 1 0 P M 17 MR. SHAHID: That's why you wear the black robe,  
2 : 1 0 P M 18 Judge, and that's why I'm over here.

2 : 1 0 P M 19 But that is the key. So if the gun -- which was  
2 : 1 0 P M 20 found underneath the driver's seat, and you could have, of  
2 : 1 0 P M 21 course, circumstantial evidence where the Government would try  
2 : 1 0 P M 22 to prove he had knowledge of that firearm, but her statement  
2 : 1 0 P M 23 negates that. Her statement states -- and this is what was  
2 : 1 0 P M 24 presented at his bond hearing back in April of 2018 when they  
2 : 1 0 P M 25 had a bond hearing, preliminary hearing. His then lawyer,

2 : 1 0 P M 1 MS. Penn, proposed to the Court and presented to Magistrate  
2 : 1 0 P M 2 Judge Gordon that there's a statement in which she says that  
2 : 1 0 P M 3 she put the gun there essentially without his knowledge.

2 : 1 1 P M 4 So that information, Judge, is highly important  
2 : 1 1 P M 5 to him, because if she's called to the witness stand to testify  
2 : 1 1 P M 6 about that, this jury can hear that evidence and take that  
2 : 1 1 P M 7 evidence into account and weigh whether or not he's guilty or  
2 : 1 1 P M 8 not guilty of that offense. We will probably stipulate to the  
2 : 1 1 P M 9 other elements, so the critical element over here is whether or  
2 : 1 1 P M 10 not her testimony can come in to -- for the jury to weigh. If  
2 : 1 1 P M 11 they believe her, he would then be found not guilty of that  
2 : 1 1 P M 12 offense.

2 : 1 1 P M 13 THE COURT: Why would she testify? Doesn't she have  
2 : 1 1 P M 14 a Fifth Amendment right not to testify?

2 : 1 1 P M 15 MR. SHAHID: That's why --

2 : 1 1 P M 16 THE COURT: She's also recanted the statement, right?

2 : 1 1 P M 17 MR. SHAHID: Sir?

2 : 1 1 P M 18 THE COURT: She's also recanted the statement?

2 : 1 1 P M 19 MR. SHAHID: Well, maybe. I mean, that's their  
2 : 1 1 P M 20 version of it.

2 : 1 1 P M 21 THE COURT: Okay.

2 : 1 1 P M 22 MR. SHAHID: And that goes into why I want to depose  
2 : 1 1 P M 23 her, because I think if I can depose her, we can flesh this  
2 : 1 1 P M 24 out, particularly the Government's allegation or claim that she  
2 : 1 2 P M 25 met with the ATF agent, and the ATF agent says that she

2 : 1 2 P M 1 recanted. There's no written statement from her as to that  
2 : 1 2 P M 2 meeting. That's just the agent's notes and his recollection of  
2 : 1 2 P M 3 what took place, and I'm not here to undermine that, but he's  
2 : 1 2 P M 4 going to say one thing. She's going to say something else.

2 : 1 2 P M 5 THE COURT: Of course, if you win your suppression  
2 : 1 2 P M 6 motion, it's totally irrelevant.

2 : 1 2 P M 7 MR. SHAHID: If we win the suppression motion, all of  
2 : 1 2 P M 8 this would be irrelevant.

2 : 1 2 P M 9 THE COURT: Then there would be no Motion to Sever.  
2 : 1 2 P M 10 There wouldn't be any basis for your Motion to Sever; is that  
2 : 1 2 P M 11 right?

2 : 1 2 P M 12 MR. SHAHID: That's right. But that's -- I mean,  
2 : 1 2 P M 13 this is -- that's the critical part of all of this, because it  
2 : 1 2 P M 14 is so important.

2 : 1 2 P M 15 Now, the other way of doing this, Judge, as well  
2 : 1 2 P M 16 is that if you sever and require her to go first in her trial,  
2 : 1 2 P M 17 depending on the outcome of that trial, then we may not have a  
2 : 1 2 P M 18 Fifth Amendment hurdle to overcome. Not having that Fifth  
2 : 1 2 P M 19 Amendment hurdle, she's more free to testify, and we can  
2 : 1 2 P M 20 proceed with her as being a quote-unquote free witness, an  
2 : 1 3 P M 21 uninhibited witness at that point. I mean, that's -- the  
2 : 1 3 P M 22 information is highly critical to him to have her have that  
2 : 1 3 P M 23 testimony come into court for a jury to decide if we think it's  
2 : 1 3 P M 24 still available, and we think it is, because she gave a -- it  
2 : 1 3 P M 25 was a sworn statement.



2 : 1 3 P M 1 THE COURT: There's a different between a sworn  
2 : 1 3 P M 2 statement and getting right up here in front of the jury and  
2 : 1 3 P M 3 saying that.

2 : 1 3 P M 4 MR. SHAHID: I learned early in my career there are  
2 : 1 3 P M 5 three stories a witness tells you: One in your office, one as  
2 : 1 3 P M 6 you're walking across the street to the courthouse, and one on  
2 : 1 3 P M 7 the witness stand.

2 : 1 3 P M 8 THE COURT: And then one going home.

2 : 1 3 P M 9 MR. SHAHID: That's the fourth one. What I meant --  
2 : 1 3 P M 10 that's what I meant to say with that statement. But what we  
2 : 1 3 P M 11 know right now is what we have to live in in this world, which  
2 : 1 3 P M 12 is this particular statement, and I want to depose her. This  
2 : 1 3 P M 13 is I think honestly --

2 : 1 3 P M 14 THE COURT: Rule 15 doesn't allow for depositions  
2 : 1 3 P M 15 that -- for discovery purposes, which is essentially what you  
2 : 1 3 P M 16 want, right?

2 : 1 3 P M 17 MR. SHAHID: well, if you state it like that, yes,  
2 : 1 4 P M 18 but it also provides --

2 : 1 4 P M 19 THE COURT: There's two ways to get the answer no.  
2 : 1 4 P M 20 One is not to ask.

2 : 1 4 P M 21 MR. SHAHID: well, that's why I told my wife talking  
2 : 1 4 P M 22 about children, what they were doing the night before, don't  
2 : 1 4 P M 23 ask if you don't want the answer to that question.

2 : 1 4 P M 24 So -- but the other way of handling this, Judge,  
2 : 1 4 P M 25 is really to simply make her go first in this trial, see where

2 : 1 4 P M 1 we are at that point, and then we can proceed. But otherwise,  
2 : 1 4 P M 2 he's going to be highly prejudiced if I can't call her as a  
2 : 1 4 P M 3 witness. That's where we are with all of this honestly.

2 : 1 4 P M 4 THE COURT: Okay.

2 : 1 4 P M 5 MR. SHAHID: That's --

2 : 1 4 P M 6 THE COURT: Assuming that she went to trial, and  
2 : 1 4 P M 7 assuming she was found -- let's say she was found guilty for  
2 : 1 4 P M 8 some reason, she would still have the Fifth Amendment right not  
2 : 1 4 P M 9 to testify, right?

2 : 1 4 P M 10 MR. SHAHID: If she's found guilty --

2 : 1 4 P M 11 THE COURT: Yeah.

2 : 1 4 P M 12 MR. SHAHID: Then it would depend --

2 : 1 4 P M 13 THE COURT: I mean, because everybody who's found  
2 : 1 4 P M 14 guilty appeals their sentence, and so she still has the  
2 : 1 4 P M 15 presumption of innocence and all that kind of stuff, right?

2 : 1 5 P M 16 MR. SHAHID: Well, I have a lot of faith in my  
2 : 1 5 P M 17 co-defendant counsel behind me that he will find her not  
2 : 1 5 P M 18 guilty, and hopefully that will take place, and if she's found  
2 : 1 5 P M 19 not guilty --

2 : 1 5 P M 20 THE COURT: Now you're starting to pull my leg.

2 : 1 5 P M 21 MR. SHAHID: Judge, we just don't -- we don't know.  
2 : 1 5 P M 22 I mean, all I can deal with is what I know right now, and what  
2 : 1 5 P M 23 I know right now, I've got a statement that helps him with his  
2 : 1 5 P M 24 trial, and if he's found not guilty of that because of her  
2 : 1 5 P M 25 statement, then that's sort of the proof is in the pudding with

2 : 1 5 P M 1 this.

2 : 1 5 P M 2 THE COURT: Okay.

2 : 1 5 P M 3 MR. SHAHID: And it's not some kind of made-up  
2 : 1 5 P M 4 statement. It's not something that is whimsical. She's a  
2 : 1 5 P M 5 co-defendant in a statement that goes to the heart of the  
2 : 1 5 P M 6 Government's case as to Count 1 of this Indictment. If they  
2 : 1 5 P M 7 want to dismiss Count 1, then that leaves me in a different  
2 : 1 5 P M 8 situation.

2 : 1 5 P M 9 THE COURT: Okay.

2 : 1 5 P M 10 MR. SHAHID: which I don't think the Government is  
2 : 1 5 P M 11 willing to do that.

2 : 1 5 P M 12 THE COURT: Not yet.

2 : 1 5 P M 13 MR. SHAHID: Not yet.

2 : 1 5 P M 14 THE COURT: But, Mr. Schoen, I'll be glad to hear  
2 : 1 5 P M 15 from you.

2 : 1 5 P M 16 MR. SCHOEN: Your Honor, I think that with regard to  
2 : 1 6 P M 17 Mr. Shahid's motion, this is a fairly straightforward, and I  
2 : 1 6 P M 18 think we've laid it out pretty clearly in our brief. I think  
2 : 1 6 P M 19 that the Court's going to look, you know, at the various  
2 : 1 6 P M 20 factors we've identified. The Court's supposed to look at the  
2 : 1 6 P M 21 significance of the testimony in relation to the Defendant's  
2 : 1 6 P M 22 theory of defense, which I understand that that is significant,  
2 : 1 6 P M 23 or at least Mr. Shahid's argument that it's significant; assess  
2 : 1 6 P M 24 the extent of the prejudice; pay close attention to judicial  
2 : 1 6 P M 25 administration and economy; give weight to the timeliness of

2 : 1 6 P M 1 the motion; and consider the likelihood that the  
2 : 1 6 P M 2 co-defendant --

2 : 1 6 P M 3 THE COURT: Better slow down, Mr. Schoen.

2 : 1 6 P M 4 MR. SCHOEN: I'm sorry, and finally consider the  
2 : 1 6 P M 5 likelihood that the co-defendant's testimony could be  
2 : 1 6 P M 6 impeached. And it's that part, Judge, that I think is really  
2 : 1 6 P M 7 pretty compelling; that we have a statement that she did, you  
2 : 1 6 P M 8 know, author. For the record, I'm still trying to get a copy  
2 : 1 6 P M 9 of the actual written statement from Mr. Shahid. I've  
2 : 1 6 P M 10 requested it in discovery, because we think it's actually  
2 : 1 6 P M 11 helpful evidence to us, because what happened was that he gets  
2 : 1 7 P M 12 arrested. She goes -- she comes in and presents this  
2 : 1 7 P M 13 statement, and at the time that she presents the statement, she  
2 : 1 7 P M 14 didn't have any idea of what the Government knew about her past  
2 : 1 7 P M 15 dealings, and so this statement comes in here. It's totally  
2 : 1 7 P M 16 believable. "I put the gun underneath there." And then we  
2 : 1 7 P M 17 find out, oh, wait a minute. She's bought some guns before,  
2 : 1 7 P M 18 and turns out that other car stop, that was her gun too, and he  
2 : 1 7 P M 19 got caught with that.

2 : 1 7 P M 20 And, you know, as it further develops, turns out  
2 : 1 7 P M 21 ballistics from that particular gun matches this other  
2 : 1 7 P M 22 shooting. It turns out that there's yet another gun that shows  
2 : 1 7 P M 23 up at a crime scene, and all of that -- you know, she's  
2 : 1 7 P M 24 presented with this evidence when Agent Callahan goes down to  
2 : 1 7 P M 25 interview her, and at that point with the full picture of what

2 : 1 7 P M 1 the Government has, she says, "Hey, can I recant my statement?"

2 : 1 7 P M 2 So I don't think that Mr. Shahid actually has a  
2 : 1 7 P M 3 strong argument that this is some sort of deeply necessary  
2 : 1 7 P M 4 testimony for his client.

2 : 1 8 P M 5 That being said, I do have some concerns  
2 : 1 8 P M 6 regarding Mr. Geel's motion, and I think it would -- I don't  
2 : 1 8 P M 7 know if you want me to address those or have him argue and --

2 : 1 8 P M 8 THE COURT: Let him argue, and we'll see.

2 : 1 8 P M 9 MR. SCHOEN: Okay.

2 : 1 8 P M 10 THE COURT: Yes, sir?

2 : 1 8 P M 11 MR. GEEL: Thank you, Your Honor. May I approach  
2 : 1 8 P M 12 briefly? I have a document I'd like to present to the Court  
2 : 1 8 P M 13 just because I'm covering so many -- may I approach, Your  
2 : 1 8 P M 14 Honor?

2 : 1 8 P M 15 THE COURT: Sure.

2 : 1 8 P M 16 MR. GEEL: Just for the purposes of keeping it  
2 : 1 8 P M 17 straight, all these different alleged incidents that we're  
2 : 1 8 P M 18 talking about, Your Honor.

2 : 1 8 P M 19 And Mr. Shahid has already kind of covered what  
2 : 1 8 P M 20 is the center column here, the Smith & Wesson .40 caliber.  
2 : 1 8 P M 21 There are essentially three firearms at issue in this case:  
2 : 1 9 P M 22 The first being the Bersa 9 millimeter, the second being the  
2 : 1 9 P M 23 firearm that was just discussed, and the third being the  
2 : 1 9 P M 24 Jimenez 9 millimeter.

2 : 1 9 P M 25 The top row here is essentially the purchase

2 : 1 9 P M 1 date of each of these -- alleged purchase date of each of these  
2 : 1 9 P M 2 firearms. The Government's position would be that Ms. Ellison  
2 : 1 9 P M 3 purchased them on these respective dates.

2 : 1 9 P M 4 THE COURT: What does the paperwork say?

2 : 1 9 P M 5 MR. GEEL: I'm sorry?

2 : 1 9 P M 6 THE COURT: What does the paperwork say?

2 : 1 9 P M 7 MR. GEEL: The paperwork I have appears to suggest  
2 : 1 9 P M 8 that these are correct.

2 : 1 9 P M 9 THE COURT: So the date purchased, Ms. Ellison  
2 : 1 9 P M 10 purchased all three of these? That's pretty clear?

2 : 1 9 P M 11 MR. GEEL: Yes, that's what the paperwork looks like  
2 : 1 9 P M 12 to me, yes. And so then the following row is essentially a  
2 : 1 9 P M 13 couple of intervening incidents that happened with the -- with  
2 : 1 9 P M 14 respect to the first two firearms, the Bersa and the Smith &  
2 : 1 9 P M 15 Wesson .40 caliber.

2 : 1 9 P M 16 And then, of course, the bottom row, these are  
2 : 1 9 P M 17 the dates upon which each of these respective firearms were  
2 : 1 9 P M 18 then recovered by law enforcement.

2 : 1 9 P M 19 So as you can see, the Bersa, the date range  
2 : 1 9 P M 20 there is incidents taking place between 2007 and 2012, and then  
2 : 2 0 P M 21 it appears as though the Government's Superseding Indictment  
2 : 2 0 P M 22 kind of ropes that in now as substantive evidence, and then the  
2 : 2 0 P M 23 latter two firearms are in 2013 through 2018.

2 : 2 0 P M 24 The concerns that we've raised in our severance  
2 : 2 0 P M 25 motion are a little bit different from Mr. Shahid's.

2 : 2 0 P M 1 Essentially the allegation here is going to be that, as we've  
2 : 2 0 P M 2 said, Ms. Ellison purchased these respective firearms on these  
2 : 2 0 P M 3 dates.

2 : 2 0 P M 4 with respect to the two intervening incidents,  
2 : 2 0 P M 5 both the May 2011 shooting with the Bersa and the November 2015  
2 : 2 0 P M 6 shooting with the Smith & Wesson .40 caliber, neither of those  
2 : 2 0 P M 7 incidents involved Ms. Ellison. There's no allegation that she  
2 : 2 0 P M 8 was there. In other words -- I won't speak for the Government,  
2 : 2 0 P M 9 but I would anticipate that their theory would be that  
2 : 2 0 P M 10 Ms. Ellison's role in this conspiracy had already come to  
2 : 2 0 P M 11 fruition prior to both of those shootings. In other words, the  
2 : 2 0 P M 12 firearms at issue had been transferred from her possession. At  
2 : 2 0 P M 13 least I anticipate that would be the Government's theory.

2 : 2 0 P M 14 And then, of course, the same is true of the  
2 : 2 0 P M 15 dates on which each of these firearms are recovered. The Bersa  
2 : 2 1 P M 16 was recovered in 2012 pursuant to a failure to stop and a foot  
2 : 2 1 P M 17 pursuit with an unknown male. So today we still don't know who  
2 : 2 1 P M 18 that was.

2 : 2 1 P M 19 The March 31st, 2018 incident was, of course, as  
2 : 2 1 P M 20 Mr. Shahid has talked about with his client, Mr. Fishburne,  
2 : 2 1 P M 21 where he was found in a traffic stop with a firearm in the car  
2 : 2 1 P M 22 along with marijuana.

2 : 2 1 P M 23 And then as to the May 2nd, 2014, when the  
2 : 2 1 P M 24 9 millimeter Jimenez was recovered, that was also a failure to  
2 : 2 1 P M 25 stop, and then -- Mr. Fishburne, with another gentleman in the

1 car and a separate firearm that's not related to this, has no  
2 role in this Indictment any way.

3 So essentially what you have is a situation where all  
4 of the sort of second and third rows of this grid that I've set  
5 out involve additional criminal conduct. The 2015 shooting was  
6 the -- I'm sorry, I forgot to touch on that one. The 2015  
7 shooting in November with the Smith & Wesson .40 caliber was a  
8 shooting after a drag race that is alleged to have --  
9 Mr. Fishburne is alleged to have been involved in that. Again,  
10 Ms. Ellison not involved in that particular shooting, but Your  
11 Honor may recall that that particular incident was the subject  
12 of an Indictment in Walterboro with the Cowboys.

13 And then with the May 2011 shooting, sort of  
14 similar rough sketch of the facts where there's a shootout  
15 between two groups of people at a car wash in Walterboro or  
16 thereabouts, and so essentially what you have is significant  
17 additional criminal conduct that will be illustrated. I  
18 believe the Government will want to get into all of this in  
19 illustrating how the firearms came to be in the Government's  
20 possession and, again, not involving Ms. Ellison at all.

21 If we sort of had things our way, which, of course, I  
22 understand is a big if, if we were going to trial separately,  
23 we would essentially cede stipulations to all the -- the second  
24 and third rows of this chart. I mean, this doesn't involve  
25 Ms. Ellison at all.



2 : 2 2 P M 1 we don't dispute that the firearms are now in  
2 : 2 3 P M 2 the Government's possession. we don't dispute most of the  
2 : 2 3 P M 3 circumstances under which they came to be in the Government's  
2 : 2 3 P M 4 possession now.

2 : 2 3 P M 5 what we would strenuously seek to avoid the jury  
2 : 2 3 P M 6 hearing anything about is the new substantive criminal conduct  
2 : 2 3 P M 7 that gave rise to the firearms being discovered: Two  
2 : 2 3 P M 8 gang-related shootings, two incidents of failure to stop for a  
2 : 2 3 P M 9 blue light, an incident with Mr. Fishburne allegedly possessing  
2 : 2 3 P M 10 marijuana. You know, again, if we were tried separately, we  
2 : 2 3 P M 11 would seek to limit this stuff significantly.

2 : 2 3 P M 12 Now, of course, these boxes are precisely where  
2 : 2 3 P M 13 Mr. Shahid's case is going to be tried. He is going to argue  
2 : 2 3 P M 14 the circumstances under which the firearms allegedly came to be  
2 : 2 3 P M 15 in his client's possession, and he'll dispute that his client  
2 : 2 3 P M 16 knew about it. So we're essentially going to be fighting on  
2 : 2 3 P M 17 very different terrain here, I anticipate.

2 : 2 3 P M 18 And one thing, this is a very fact-specific  
2 : 2 3 P M 19 inquiry, so I don't want to rely on the cases in my motion as  
2 : 2 3 P M 20 though they are controlling. Many of them are out-of-circuit,  
2 : 2 3 P M 21 but I'll just point Your Honor to the Cortinas case from the  
2 : 2 4 P M 22 Fifth Circuit which we cited which involved a gang shooting in  
2 : 2 4 P M 23 which the -- similar circumstances which the Court indicated  
2 : 2 4 P M 24 that presenting testimony of a gang-style shooting that didn't  
2 : 2 4 P M 25 involve two of the Defendants was highly inflammatory, and the

1 way I see this evidence, it looks as though we've got very  
2 similar circumstances here.

3 And to change gears a little bit, Your Honor, one  
4 other issue that I outlined in my motion is the concern that we  
5 have as far as Mr. Fishburne's criminal history. Of course,  
6 that's going to be an issue that would need to be touched on  
7 here as it's a sort of element. The Government has requested  
8 stipulations to the fact that Mr. Fishburne is a convicted  
9 felon, but also requested a stipulation to my client's  
10 knowledge of same, which is of course an element here, and the  
11 reason that they want that stipulation is --

12 **THE COURT:** You mean knowledge that he's a convicted  
13 felon?

14 **MR. GEEL:** Correct. And, of course, I understand why  
15 Mr. Shahid and Mr. Schoen would both seek that kind of  
16 stipulation from me, because they want to limit the extent to  
17 which the jury hears about Mr. Quentin Fishburne's history,  
18 whereas -- I mean, we can't stipulate to that. It is an  
19 element of the offense. I don't think I would be representing  
20 my client zealously if I was agreeing to stipulate to something  
21 that's contested and an element of the offense, and the fact  
22 that we are at odds as to whether to make that stipulation  
23 demonstrates the conflict between our respective positions.

24 There's also a -- the -- one of -- I'm not sure  
25 if it's the only, but at least one of Mr. Fishburne's prior

2 : 2 5 P M 1 felony convictions is a Georgia case involving the use of a  
2 : 2 5 P M 2 firearm, and his -- his background and the constructive  
2 : 2 5 P M 3 possession at least of the firearm on both dates, the March  
2 : 2 5 P M 4 31st traffic stop in 2018 and the May 2nd traffic stop in 2014,  
2 : 2 5 P M 5 I don't know how the evidence is going to come out at trial,  
2 : 2 5 P M 6 but it's conceivable that essentially suggesting that  
2 : 2 6 P M 7 Mr. Fishburne played some role in procuring the firearms  
2 : 2 6 P M 8 without Ms. Ellison's knowledge could plausibly be an argument  
2 : 2 6 P M 9 that could be inferred from the facts of the case.

2 : 2 6 P M 10 That's the thing that I -- I anticipate I would  
2 : 2 6 P M 11 be prohibited from making an argument that I would be unable to  
2 : 2 6 P M 12 make at this trial because of the fact that we're -- if we were  
2 : 2 6 P M 13 to go to trial together is what I mean.

2 : 2 6 P M 14 So all of these things, you know, they have a  
2 : 2 6 P M 15 significant impact on our need for severance. I mean, these  
2 : 2 6 P M 16 all tie to very, very important trial rights, you know, our due  
2 : 2 6 P M 17 process right to present a full defense. A lot of the cases  
2 : 2 6 P M 18 talk about the possibility of the antagonistic defenses which  
2 : 2 6 P M 19 there is a distinct possibility that there could be  
2 : 2 6 P M 20 antagonistic defenses here.

2 : 2 6 P M 21 And, of course, I have the same issue that  
2 : 2 6 P M 22 Mr. Shahid does, which is to say that I don't know if his  
2 : 2 6 P M 23 client is going to be testifying or what he would say. So we  
2 : 2 6 P M 24 could end up suddenly finding ourselves with antagonistic  
2 : 2 6 P M 25 defenses when that was sort of unanticipated prior to trial

1 just because we don't know what each other's clients are going  
2 to say.

3 THE COURT: That's not abnormal. That's usual.

4 MR. GEEL: It's certainly not.

5 THE COURT: That's every time.

6 MR. GEEL: The unique circumstances of the case and  
7 in light of my client's statement and in light of the fact  
8 that, as I said, the bulk of this evidence, the majority of the  
9 evidence that we're going to be hearing will be dealing with  
10 Mr. Fishburne's conduct, alleged conduct and have nothing to do  
11 with my client, at least not her direct participation.

12 And then the last thing that I'll bring up is  
13 all the issues that Mr. Shahid has brought to the Court's  
14 attention as far as whether Ms. Ellison testifies, this is also  
15 not an abnormal thing, but this would burden her election to  
16 testify or not testify. She has the statement out there, and  
17 she will be impeached by Mr. Shahid, and she will be impeached  
18 by Mr. Schoen, you know, either way, which wouldn't be the case  
19 if, you know, we went to trial separately. I mean, we'd have  
20 to deal with the Government potentially impeaching her, but we  
21 wouldn't have to fight that war on two fronts in terms of both  
22 of them attempting to show my client to be not telling the  
23 truth during her testimony.

24 So I think that that's all I have as far as  
25 additional grounds for severance, Your Honor. Thank you.

2 : 2 8 P M 1 THE COURT: So if you went to trial together on this  
2 : 2 8 P M 2 Superseding Indictment, your client would not testify, right?

2 : 2 8 P M 3 MR. GEEL: Well, I can't say at this time whether she  
2 : 2 8 P M 4 would or she wouldn't, but the thing is all -- and that's not  
2 : 2 8 P M 5 because I'm being cagey. I mean, one just doesn't know  
2 : 2 8 P M 6 until --

2 : 2 8 P M 7 THE COURT: Let's say she's in court, and Mr. Shahid  
2 : 2 8 P M 8 calls her.

2 : 2 8 P M 9 MR. GEEL: Okay.

2 : 2 8 P M 10 THE COURT: She's going to take her Fifth Amendment  
2 : 2 8 P M 11 rights, right?

2 : 2 8 P M 12 MR. GEEL: I would likely advise her to do that, yes,  
2 : 2 8 P M 13 if it was in my election.

2 : 2 8 P M 14 THE COURT: If you didn't elect to advise her to do  
2 : 2 8 P M 15 that, you might want to call your insurer.

2 : 2 8 P M 16 MR. GEEL: Sure. I agree. I think that that would  
2 : 2 8 P M 17 be a pretty bad day for me, but I guess I'm thinking about it  
2 : 2 8 P M 18 in terms of -- the question is whether I would want her to  
2 : 2 8 P M 19 testify or not during the trial, but, yeah. I mean, I don't  
2 : 2 8 P M 20 think I'd be doing my job if under any circumstances anyone  
2 : 2 8 P M 21 sought to get her to talk about this case other than me putting  
2 : 2 8 P M 22 her up to testify at trial. I think that's the only -- those  
2 : 2 8 P M 23 are the only circumstances that I would be able to keep my bar  
2 : 2 9 P M 24 license.

2 : 2 9 P M 25 THE COURT: We don't want you to lose that, okay?

2 : 2 9 P M 1 MR. GEEL: I appreciate that, Judge. That's all I  
2 : 2 9 P M 2 have as far as severance, Judge.

2 : 2 9 P M 3 THE COURT: Okay. Great. Thank you. And you're  
2 : 2 9 P M 4 opposed to the deposition?

2 : 2 9 P M 5 MR. GEEL: Yes, sir.

2 : 2 9 P M 6 THE COURT: Okay. Just want to make sure. Cover all  
2 : 2 9 P M 7 the bases. Yes, sir, Mr. Schoen?

2 : 2 9 P M 8 MR. SCHOEN: So, Judge, I'm going to concede that  
2 : 2 9 P M 9 this is a closer call. I think that there are some complicated  
2 : 2 9 P M 10 issues. I think the biggest problem we've got is that we don't  
2 : 2 9 P M 11 really have much of anything in the way of solid evidence --  
2 : 2 9 P M 12 it's the defense's burden to show that severance is  
2 : 2 9 P M 13 appropriate, and what we have here is a lot of speculation  
2 : 2 9 P M 14 about what may or may not happen without a whole lot of facts.  
2 : 2 9 P M 15 So when you look at Mr. Geel's motion, you know, look at these  
2 : 2 9 P M 16 various enumerated categories of potentially problematic  
2 : 3 0 P M 17 evidence, one is Ellison's need place Fishburne's character in  
2 : 3 0 P M 18 issue. That's number 4, and I could certainly see how that  
2 : 3 0 P M 19 could become very antagonistic, but we haven't got a 404(b)  
2 : 3 0 P M 20 notice of any intent to offer that type of evidence. We  
2 : 3 0 P M 21 haven't received a shred of reciprocal discovery suggesting any  
2 : 3 0 P M 22 of these things, listing witnesses. We don't have any --  
2 : 3 0 P M 23 there's just nothing, nothing other than the, "This  
2 : 3 0 P M 24 theoretically could happen," and I think that leaves us in a  
2 : 3 0 P M 25 pretty problematic position in being able to assess, and quite

2 : 3 0 P M 1 candidly, Judge, I don't want to get to trial and have -- you  
2 : 3 0 P M 2 know, be blind-sided by issues that they're going to then raise  
2 : 3 0 P M 3 on appeal that could be significant, but we just -- we don't  
2 : 3 0 P M 4 have any of the information that would enable us or the Court  
2 : 3 0 P M 5 to evaluate whether or not this is a good decision. Since it's  
2 : 3 1 P M 6 their burden, I mean, I think that weighs against severance.

2 : 3 1 P M 7 But, on the other hand, Your Honor, I do want to  
2 : 3 1 P M 8 be very candid with the Court that I do see issues that -- you  
2 : 3 1 P M 9 know, there are going to be some thorny evidentiary issues if  
2 : 3 1 P M 10 these two cases are tried together, things like -- I will be  
2 : 3 1 P M 11 very direct. We do intend -- we will argue that if Ms. Ellison  
2 : 3 1 P M 12 won't stipulate to knowledge or that she knows about  
2 : 3 1 P M 13 Mr. Fishburne's felonies, then we as the Government in order to  
2 : 3 1 P M 14 meet our burden have to be able to get into why she would know,  
2 : 3 1 P M 15 and part of that reason is because this is -- you know, he  
2 : 3 1 P M 16 didn't get a little tiny baby felony. He spent 10 years in  
2 : 3 1 P M 17 prison for killing his cousin when he was 14, and that's a  
2 : 3 1 P M 18 fairly inflammatory significant allegation.

2 : 3 1 P M 19 So being very candid, those are the issues I  
2 : 3 1 P M 20 see. I trust the Court to make the right decision, but I do  
2 : 3 1 P M 21 think that we need more information from the defense for the  
2 : 3 2 P M 22 Court to make that decision.

2 : 3 2 P M 23 **THE COURT:** Mr. Geel, let me ask you a question.  
2 : 3 2 P M 24 Your motion -- Mr. Shahid told me that if in fact Count 1 was  
2 : 3 2 P M 25 not tried, that that would solve his problems with the separate

2 : 3 2 P M 1 trials, because there wouldn't be any antagonistic defenses.  
2 : 3 2 P M 2 How about if that happens, you're -- do you still have a Motion  
2 : 3 2 P M 3 to Sever?

2 : 3 2 P M 4 MR. GEEL: Yes, sir, Your Honor. So Count 1 deals  
2 : 3 2 P M 5 with the .40 caliber traffic stop. We would still be left with  
2 : 3 2 P M 6 the issues relating to the Bersa firearm, the -- and the  
2 : 3 2 P M 7 shooting, the drag race shooting. I mean, those are -- it  
2 : 3 2 P M 8 would -- it would lessen the concern to be sure, because a lot  
2 : 3 2 P M 9 of the antagonism between Ms. Ellison and Mr. Fishburne does  
2 : 3 2 P M 10 deal with the most recent traffic stop, but it doesn't get past  
2 : 3 2 P M 11 the main area of concern I have, which is to say the bulk of  
2 : 3 3 P M 12 this trial is going to be allegations about Mr. Fishburne's  
2 : 3 3 P M 13 alleged involvement in -- and it raises the specter of all  
2 : 3 3 P M 14 kinds of different things, gang activity, and I simply don't  
2 : 3 3 P M 15 know the extent to which the Government will want to get into  
2 : 3 3 P M 16 that, not -- just because we haven't sort of crossed that  
2 : 3 3 P M 17 bridge yet. And -- so I guess that's my answer. It would  
2 : 3 3 P M 18 alleviate the problem somewhat, but it wouldn't cure it  
2 : 3 3 P M 19 completely.

2 : 3 3 P M 20 THE COURT: Okay. Great. Thank you.

2 : 3 3 P M 21 MR. SCHOEN: Judge, I don't want to handicap my  
2 : 3 3 P M 22 suppression arguments --

2 : 3 3 P M 23 THE COURT: That's all right.

2 : 3 3 P M 24 MR. SCHOEN: -- by -- I don't want my suppression  
2 : 3 3 P M 25 argument to be damaged by the possibility of --



2 : 3 3 P M 1 THE COURT: You're going to respond to that by next  
2 : 3 3 P M 2 Monday -- next Wednesday.

2 : 3 3 P M 3 MR. SCHOEN: Next Wednesday.

2 : 3 3 P M 4 THE COURT: Yeah, yeah, and, you know, I've seen  
2 : 3 3 P M 5 suppression motions, and I've seen suppression motions. This  
2 : 3 3 P M 6 looks like a pretty good one. Okay?

2 : 3 3 P M 7 MR. SCHOEN: Your Honor, I mean --

2 : 3 3 P M 8 THE COURT: I mean, I've only heard one side.

2 : 3 4 P M 9 MR. SCHOEN: Certainly.

2 : 3 4 P M 10 THE COURT: I mean, the facts that he put in there  
2 : 3 4 P M 11 may not be correct, and so I don't know what the facts are, and  
2 : 3 4 P M 12 if you -- I don't know if you're dealing with the Walterboro  
2 : 3 4 P M 13 Police Department. They're a professional crowd, but there's a  
2 : 3 4 P M 14 lot of people that come and leave these things after a few  
2 : 3 4 P M 15 years, and I don't know whether the witnesses are available or  
2 : 3 4 P M 16 anything like that.

2 : 3 4 P M 17 MR. SCHOEN: I believe that they are available.

2 : 3 4 P M 18 THE COURT: Okay. Yeah. All right. So we'll cross  
2 : 3 4 P M 19 that bridge when we come to it, certainly.

2 : 3 4 P M 20 MR. GEEL: Your Honor, may I add one thing that I  
2 : 3 4 P M 21 neglected to mention? Is that -- so as Mr. Schoen just said,  
2 : 3 4 P M 22 we -- once we have determined our 404(b) notice. Now, as far  
2 : 3 4 P M 23 as dealing with today, I think I anticipated most of which  
2 : 3 4 P M 24 column this evidence would fall into as direct evidence versus  
2 : 3 4 P M 25 404(b), but there is some potential 404(b) evidence out

2 : 3 4 P M 1 there -- or at least evidence that I feel would not be  
2 : 3 4 P M 2 admissible as direct in evidence this case but maybe this Court  
2 : 3 4 P M 3 will be -- that could give rise to additional severance issues,  
2 : 3 4 P M 4 which is to say that 404(b) that deals only with Mr. Fishburne.  
2 : 3 4 P M 5 So -- and anyways, I thought I would just flag that, because we  
2 : 3 5 P M 6 haven't crossed that bridge yet either, and that could bring up  
2 : 3 5 P M 7 even more issues.

2 : 3 5 P M 8 THE COURT: Sure. Okay. All right. Anything else,  
2 : 3 5 P M 9 Mr. Geel or Mr. Shahid?

2 : 3 5 P M 10 MR. GEEL: No, sir.

2 : 3 5 P M 11 MR. SHAHID: He covered what I was going to say in  
2 : 3 5 P M 12 addition to the 404(b). I haven't had a chance to go through  
2 : 3 5 P M 13 what's out there, but that may be adding more pile-on to our  
2 : 3 5 P M 14 concerns for the severance. So I have an idea what's out  
2 : 3 5 P M 15 there, and I think I kind of alluded to some of these issues  
2 : 3 5 P M 16 with these other guns being involved. So that may be another  
2 : 3 5 P M 17 problematic issue to address. I think this is where we are  
2 : 3 5 P M 18 right now.

2 : 3 5 P M 19 And I can proffer to the Court her statement,  
2 : 3 5 P M 20 and I think it has substance to it that is important to  
2 : 3 5 P M 21 Mr. Fishburne's defense, and, I mean, it clearly indicates that  
2 : 3 5 P M 22 he wouldn't -- he did not know that she had -- what she had  
2 : 3 5 P M 23 done, and that's sort of the sum and substance of what I would  
2 : 3 6 P M 24 hope she would say if she was called to the witness stand.

2 : 3 6 P M 25 THE COURT: Okay. All right. Anything else?

2 : 3 6 P M 1 MR. SHAHID: That's all, Judge. We did file a Motion  
2 : 3 6 P M 2 for a Bond. I don't know if you want a magistrate judge to  
2 : 3 6 P M 3 hear that instead.

2 : 3 6 P M 4 THE COURT: Yeah. I mean, third time is usually not  
2 : 3 6 P M 5 the charm, all right?

2 : 3 6 P M 6 MR. SHAHID: I understand.

2 : 3 6 P M 7 THE COURT: Unless there's some changed  
2 : 3 6 P M 8 circumstances, I would imagine the magistrate judge is not  
2 : 3 6 P M 9 going to change his or her opinion.

2 : 3 6 P M 10 MR. SHAHID: Okay.

2 : 3 6 P M 11 THE COURT: Are there any changed circumstances?

2 : 3 6 P M 12 MR. SHAHID: Well, could I address it at that point?

2 : 3 6 P M 13 THE COURT: Yeah, you can address it at that point.  
2 : 3 6 P M 14 Yeah, sure.

2 : 3 6 P M 15 Okay. All right. I'm going to deny your motion  
2 : 3 6 P M 16 for a deposition. I think it's purely discovery purposes as  
2 : 3 6 P M 17 opposed to the purposes for which this rule was promulgated.  
2 : 3 7 P M 18 I'm going to take under advisement the severance motions,  
2 : 3 7 P M 19 because severance motions a lot of time will make little  
2 : 3 7 P M 20 difference after we decide the suppression motion, because if  
2 : 3 7 P M 21 the suppression motion is granted, then Mr. Shahid doesn't have  
2 : 3 7 P M 22 any severance problems, and he can go first, okay? If it's not  
2 : 3 7 P M 23 granted, then we'll cross that bridge when we come to it, but  
2 : 3 7 P M 24 we're going to decide that hopefully the first part not next  
2 : 3 7 P M 25 week, but the week after next, okay?

1 All right. Anything else?

2 MR. SHAHID: That's it for us, Your Honor. Thank  
3 you.

4 THE COURT: All right. Thank you very much.

5 MR. SHAHID: Thank you, Judge. Thank you for your  
6 patience.

7 (End of proceedings.)

8 \* \* \* \* \*

9 UNITED STATES DISTRICT COURT

10 MIDDLE DISTRICT OF SOUTH CAROLINA

11  
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Middle District of Florida  
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